

# Calendar No. 1062

91ST CONGRESS }  
2d Session }

SENATE

{ REPORT  
No. 91-1057

## AMALIA P. MONTERO

JULY 30, 1970.—Ordered to be printed

Mr. BURDICK, from the Committee on the Judiciary, submitted the following

### REPORT

[To accompany H.R. 6375]

The Committee on the Judiciary, to which was referred the bill (H.R. 6375) for the relief of Amalia P. Montero, having considered the same, reports favorably thereon without amendment and recommends that the bill do pass.

#### PURPOSE

The purpose of the proposed legislation, as amended, is to relieve Amalia P. Montero, employed by the Joint U.S. Military Group—Military Assistance Advisory Group, Spain, of liability to the United States in the amount of \$1,395.84, representing the total amount of living quarters allowance paid to her by the Department of the Air Force during the period of October 13, 1963, through April 9, 1965, as a result of erroneous payment without fault on her part. The bill would authorize the refund of any amount paid or withheld by reason of this indebtedness.

#### STATEMENT

In its favorable report on the bill, the House Judiciary Committee relates the facts of the case as follows:

The Department of the Army in its report to the committee on the bill stated that it did not oppose it.

Mrs. Montero, is an employee of the U.S. Army in Spain. In 1954, Mrs. Montero, a domiciliary of New York, went to Spain as a tourist to marry a Uruguayan national. She was married shortly after her arrival there and between July 1955

and September 1960 was hired by a U.S. Defense contractor as a clerk. When released during a phaseout of that operation, she remained in Spain to accompany her husband as a tourist and was supported by him and her savings until hired by the U.S. Army in June 1961. She was given a GS-4 rating, was placed under the pay jurisdiction of the U.S. Air Force, Torrejon, Spain, and was declared ineligible for a living quarters allowance. Section 030 of the basic regulations governing this allowance (State Department Standardized Regulations) was revised effective October 13, 1963. The revised section does not contain the former restriction (relating to determining the dependency of husband upon the wife employee) that the husband be physically or mentally incapable of self-support. Following the revision of section 030 of the regulations, Mrs. Montero, upon invitation of the servicing civilian personnel office, applied for and received the quarters allowance effective October 13, 1963.

A review of the eligibility of persons receiving the quarters allowance was conducted and apparently this gave rise to the problem dealt with in this bill. Mrs. Montero was notified by letter dated April 1, 1965, from the civilian personnel officer, that she did not meet the requirements contained in section 031.12 (a subsection of sec. 030) of the State Department Standardized Regulations and that she would have to reimburse the Government in the sum of \$1,395.84, the amount of the allowance she had been paid. It was determined that she did not qualify for the allowance as "she was not recruited in the United States, Puerto Rico, the Canal Zone, or a possession of the United States, was not required to move to the area as a condition of her employment, nor was her reason for being in the area for travel or study." The committee notes that this objection is quite a different reason than that originally raised prior to the liberalization of the regulations. A technical review of this case, at the request of the employee, confirmed this ruling on September 10, 1965. The Department of the Air Force reviewed the circumstances and submitted their finding of ineligibility to the Department of Defense for a determination and waiver, if possible, of any repayment of funds received for living quarters allowance. The recommendation for waiver was based upon hardship which this refund would impose on Mrs. Montero. The Department of Defense confirmed the determination of ineligibility and advised that, based on a decision of the Comptroller General dated June 6, 1966 (B-159212), there was no authority to waive recovery of the overpayment. The total amount of overpayment is \$1,395.84 and collection action at the rate of \$20 per pay period began in October 1966.

In indicating it had no objection to the bill the Army stated:

"The payment of quarters allowance to Mrs. Montero resulted from an erroneous determination by the servicing civilian personnel office and through no fault of Mrs.

Montero. She did not know she was being paid erroneously and the payments were received by her in good faith. In view of these equitable considerations, the Department of the Army is not opposed to the bill."

In view of the unique equities of this case and the statement by the Army that it does not oppose relief in this instance, the committee has concluded that this matter is the proper subject for legislative relief. The Government's determination under liberalized regulations was relied upon by Mrs. Montero in good faith, and, in the light of subsequent events, to her detriment. It is felt that any equitable solution of the matter can be made through extending the relief provided in the bill. Therefore, it is recommended that it be considered favorably.

After a review of all of the foregoing, the committee concurs in the action taken by the House of Representatives and recommends favorable consideration of H.R. 6375.

Attached hereto and made a part hereof are (1) a letter dated September 18, 1967, from the Department of the Army, and (2) a letter dated March 27, 1967, from the Comptroller General of the United States.

DEPARTMENT OF THE ARMY,  
Washington, D.C., September 18, 1967.

HON. EMANUEL CELLER,  
*Chairman, Committee on the Judiciary,*  
*House of Representatives.*

DEAR MR. CHAIRMAN: Reference is made to your request for the views of the Department of the Army on H.R. 5959, 90th Congress, a bill for the relief of Amalia P. Montero.

This bill would relieve Amalia P. Montero from liability for repayment of \$1,395.84 to the United States for living quarters allowance erroneously paid to her by the Department of the Army from October 13, 1963, through April 9, 1965, and reimburse her for amounts paid or withheld from her salary on account of this debt.

The Department of the Army is not opposed to the bill.

Official records of the Department of the Air Force and Department of the Army disclose that Mrs. Montero, a domiciliary of New York, went to Spain in 1954 as a tourist to marry a Uruguayan national. She was married shortly after her arrival there and between July 1955 and September 1960 was hired by a U.S. Defense contractor as a clerk. When released during a phaseout of that operation, she remained in Spain to accompany her husband as a tourist and was supported by him and her savings until hired by the U.S. Army in June 1961. She was given a GS-4 rating, was placed under the pay jurisdiction of the U.S. Air Force, Torrejon, Spain, and was declared ineligible for a living quarters allowance. Section 030 of the basic regulations governing this allowance (State Department Standardized Regulations) was revised effective October 13, 1963. The revised section does not contain the former restriction (relating to determining the dependency of husband upon the wife employee) that the husband be physically or mentally incapable of self-support. Following the revision of section 030 of the regulations, Mrs. Montero, upon invitation

of the servicing civilian personnel office, applied for and received the quarters allowance effective October 13, 1963. A review of the eligibility of persons receiving the quarters allowance was conducted and Mrs. Montero was notified by letter dated April 1, 1965, from the civilian personnel officer, that she did not meet the requirements contained in section 031.12 (a subsection of sec. 030) of the State Department Standardized Regulations and that she would have to reimburse the Government in the sum of \$1,395.84, the amount of the allowance she had been paid. It was determined that she did not qualify for the allowance as "she was not recruited in the United States, Puerto Rico, the Canal Zone, or a possession of the United States, was not required to move to the area as a condition of her employment, nor was her reason for being in the area for travel or study." A technical review of this case, at the request of the employee, confirmed this ruling on September 10, 1965. The Department of the Air Force reviewed the circumstances and submitted their finding of ineligibility to the Department of Defense for a determination and waiver, if possible, of any repayment of funds received for living quarters allowance. The recommendation for waiver was based upon hardship which this refund would impose on Mrs. Montero. The Department of Defense confirmed the determination of ineligibility and advised that, based on a decision of the Comptroller General dated June 6, 1966 (B-159212), there was no authority to waive recovery of the overpayment. The total amount of overpayment is \$1,395.84 and collection action at the rate of \$20 per pay period began in October 1966.

The payment of quarters allowance to Mrs. Montero resulted from an erroneous determination by the servicing civilian personnel office and through no fault of Mrs. Montero. She did not know she was being paid erroneously and the payments were received by her in good faith. In view of these equitable considerations, the Department of the Army is not opposed to the bill.

This bill and the facts and substance of this report are substantially the same as those of a companion case pending before the committee in H.R. 1648, 90th Congress, a bill for the relief of Martina Zubiri Garcia.

It is suggested that the bill be amended by inserting in line 7 of the first page, the words "Air Force" in place of the word "Army". Mrs. Montero was employed by the Army but paid by the Air Force.

The cost of this bill, if enacted, will be \$1,395.84.

The Bureau of the Budget advises that, from the standpoint of the administration's program, there is no objection to the presentation of this report for the consideration of the committee.

Sincerely,

STANLEY R. RESOR,  
*Secretary of the Army.*



COMPTROLLER GENERAL OF THE UNITED STATES,  
*Washington, D.C., March 27, 1967.*

B-159212.

HON. EMANUEL CELLER,  
*Chairman, Committee on the Judiciary,*  
*House of Representatives.*

DEAR MR. CHAIRMAN: This is in reply to your letter of March 6, 1967, requesting an expression of our views on H.R. 5959, a bill for the relief of Amalia P. Montero, an employee of the Joint U.S. Military Group—Military Assistance Advisory Group, in Spain.

It appears from our decision B-159212, June 6, 1966 (copy enclosed), that Mrs. Montero was locally hired in Spain by a Defense contractor under an agreement which provided for her return transportation to the United States upon separation. During this period of employment she married a citizen of a third country. Subsequently, in June 1961, during the phaseout of the contractor's operation, she was employed as a local hire by the Department of the Army although her records and accounts were serviced by the Air Force.

Following an amendment to the Standardized Regulations, the State Department publication dealing with allowances for Government employees in overseas areas, in October 1963, the employee made a claim for the quarters allowance and a decision was made by the appropriate operating officials that she qualified. In April 1965, as a result of a review of the eligibility of persons receiving the quarters allowance, the Department of the Army determined that the employee did not meet all requirements contained in the Standardized Regulations and payment of the quarters allowance was discontinued. The Department of Defense conducted a technical review of the decision and confirmed that she was not eligible to receive the quarters allowance.

Subsequently, in our decision B-159212 was pointed out that a specific authority to waive recovery from the employee of advance payments of rent made to a landlord under section 202 of the Overseas Differentials and Allowances Act, Public Law 86-707, 74 Stat. 792, did not constitute authority for a general waiver of recovery of overpayment of quarters allowance made to the employee himself. Accordingly, we held that there was no authority in law to waive recovery of overpayments of that nature.

The question of whether the employee in the present instance should be relieved of the liability is a matter for determination by the Congress. However, we point out that this is not an isolated case and that many employees who have received overpayments by reason of administrative errors have made repayments. Generally, we do not favor the enactment of special legislation which grants preferential treatment to a single employee.

Sincerely yours,

FRANK H. WEITZEL,  
*Assistant Comptroller General of the United States.*

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